IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21036 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAKORE NILESH SHISHIRBHAI - Petitioner(s)
Versus
GUJARAT SECONDARY EDUCATION BOARD & 4 - Respondent(s)

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Appearance :

MR PM VYAS for Petitioner(s) : 1,MR HIREN P VYAS for Petitioner(s) : 1,MS SEJAL H VYAS for Petitioner(s) : 1,
MR HEMANG RAVAL for MR AD OZA for Respondent(s) : 1,
MS KIRAN PANDEY A.G.P. for Respondent(s) : 2,
None present for respondents no. 3 to 5

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 27/04/2007

ORAL JUDGMENT

1. **RULE**. Learned advocate Mr. Hemang Raval waives service of rule on behalf of respondent no. 1 and Ms. Kiran Pandey learned A.G.P., waives service of rule on

behalf of respondent no. 2. Respondents no. 3 to 5 though served have not appeared. Hence, at the request of the learned advocates for the respective parties, the matter is taken up for final hearing today itself.

2. The petitioner has approached this Court to seek an appropriate direction on the respondents to require them to carry out the necessary change in the School Leaving Certificate of the petitioner. It is the say of the petitioner that for generations his family has been following Christianity. However, in the Birth Certificate his caste is shown as Hindu Thakor. According to the petitioner, on noticing this discrepancy in the certificate he approached the school authorities with a request to make necessary correction, but it was refused on the ground that after pupil left the school, it was not within the power of the school authorities to effect any change in the School Leaving Certificate. In the circumstances, the petitioner has approached this Court.

3. I have heard Ms Sejal Vyas for the petitioner and Mr Hemang Raval for respondent No.1 and Ms Kiran Pandey, learned A.G.P., for respondent No.2.

3.1. It is contended by Ms Vyas that considering the fact that the petitioner has been following the Christian faith for the last three generations, there is obvious

mistake committed by the school authority in the Certificate by mentioning his caste as Hindu Thakore. She has, therefore, submitted that the School authority is bound to amend this mistake since it is the authority's fault. As against that, Mr Raval has submitted that once the student has left the school, the school authority has no power to carry out any correction in the School Leaving Certificate.

4. I have carefully considered the submissions of the learned advocates appearing for the parties. I have also closely perused the record of the petition and the necessary provisions of the Gujarat Secondary Education Regulations, 1974 [hereinafter referred to as the “Regulations”] as also the provisions of the Registration of Births and Deaths Act, 1969 [hereinafter referred to as the “Registration Act”]. The Regulations have been framed by respondent no. 1 in exercise of powers conferred by Section 54 of the Gujarat Secondary Education Act, 1972 [the “Act” for short]. They have come into force with effect from 16th March, 1974. The Regulations have been framed for the administration and Governance of secondary schools in the State. Chapter V of the Regulations contains provisions with regard to Admissions, Test, Examinations, Health and Discipline of Students. It includes Regulation !2(A). It pertains to change of the birth date, name, etc., in the school

register.

* Clause 1 of Registration 12(A) states that without obtaining prior permission in writing, no change in relation to the entries made in the school register can be effected.

*Clause 2 states that except applications pertaining to the student actually attending the school, no application for change in the register shall be accepted.

* Clause 3 requires the guardian or the parent of the student to sign the application which should be certified as such by the Principal of the school.

* Clause 4 prescribes that for effecting the change in the birth date, certain documents such as (a)Extract of the birth register; (b) Certificate of the vaccination, (c) Certified copy of the certificate of Baptism, if the student was Christian, (d) Affidavit of the parents or the guardian, sworn before the learned Magistrate or any other authentic document can be accepted as corroborating proof.

* Clause 5 relates to change in the name. It also relates to the change in the surname, name of the father, and place of birth and lastly religion and caste. So far as

the changes other than the name are concerned, they can be effected upon production of necessary documents such as certificate of the competent officer of Social Welfare, Certificate of Mamlatdar, affidavit sworn before the Magistrate or proof of its publication in the Government Gazette.

* Clause 6 of Regulation 12(A)is relevant for the purpose of this petition. It states that if the student has actually left the school, no change can be effected in the record of the school. However, if the change is to be made with regard to the birth date, it can only be done by producing before the learned concerned Magistrate, all the necessary evidence, who upon scrutiny of the same can issue certificate with regard to the real birth date and only upon production of such certificate, before the concerned authority, the correct birth date could be mentioned in the school record.

4.1. Thus, these Regulations appear to be dealing with two situations namely, when the student is actually studying in the school and secondly the student has left the school. Sub-section (d) of Clause 5 (1) of Regulation 12 (A) states that in case the student has passed public examination and he is permitted to change the name, he shall have to get it published in the Government Gazette. However, if the change was because of the marriage, it

may not be published in the Gazette. The change with regard to religion or caste can be effected by production of the certificates of the authorities stated above. This provisions takes care of the student who are still studying in the school after passing the public examination of Standard X. But once the pupil leaves the school, no change can be made in the record of the school as per Clause 6 of this Regulation. The exception is only with regard to the birth date which can be changed on the basis of the certificate issued by the learned Judicial Magistrate of First Class.

4.2. It appears from the aforesaid provisions that the learned Magistrate is empowered to enquire into the details with regard to the birth of the students and ascertain correct birth date and then issue certificate accordingly. On the basis of the same, the change can be made in the record of the school. It further appears that there is no provision in the Regulation which can enable the pupil who has left the school to get the record changed in respect of any other matter except the birth date. A former student of school will, therefore, find it very difficult to get the correction made in the school leaving certificate and that may cause such student unnecessary harassment. This may create serious impediments for the student in the matters of obtaining job, passport or furnishing true personal information to

statutory authorities or to make accurate entries in official documents. The consequence can be serious and may cause deprivation of fundamental right or non-fundamental or ordinary legal right. This Court under Article 226 of the Constitution of India can remedy such injustice since power has been conferred upon it not only for enforcement of fundamental right but even for other purpose.

5. It may also be noted here that so far as the Registration of the Birth and Death Act is concerned, the Judicial Magistrate, First Class, is empowered to verify the correctness of the date of birth or death, on payment of prescribed fee under sub-section(3) of Section 13 of the Registration Act. When the pupil is still studying in the school, for correction of the birth date or name, it is sufficient for him to produce the affidavit sworn before the learned Judicial Magistrate. Even Clause 6 of Regulation 12(A) permits correction in school record in respect of birth date even after the pupil had left the school on the basis of certificate issued by the Judicial Magistrate, First Class. The certificate can be issued by the Magistrate, only after making due scrutiny of the corroborative evidence and upon being convinced about the correctness of the birth date. Thus, it can be seen that certain powers have been conferred upon Judicial Magistrate, First Class by which he can make detailed

scrutiny of the necessary evidence and issue certificate. In the instant case, the petitioner has prayed that his religion is wrongly mentioned in the school leaving certificate and though he is Christian, his caste is shown as Hindu Thakore. The petitioner initially approached the school authorities, but the school authorities failed to effect any change. He has, therefore, approached this Court. The entire issue is based on facts. Whether the petitioner is Christian or Hindu Thakore can be determined or decided or ascertained only upon detailed inquiry being made by some authority on the basis of various documents and if necessary, even by recording oral statement or the affidavit. This Court under Article 226 of the Constitution of India cannot make such inquiry. As already stated above, there is no provision in the Regulation to effect any change in the school leaving certificate except change relating to the birth date, after the pupil has left the school, but that should not make the genuine person suffer unnecessarily. Considering the provisions referred to above, this Court can always direct the sub-ordinate Court in the State to make necessary inquiry and issue proper certificate in accordance with the findings arrived at after the inquiry. In the background of the provisions stated above, it also appears that the learned Judicial Magistrate of the area can be the proper authority to make such inquiry and issue certificate to the concerned

student. The procedure which is being followed for correction of the birth date in the school record after the pupil has left the school can be also be applied or followed in other matters such as change in the name, caste/religion, place of birth etc.

5.1. This Court can certainly exercise its power under writ jurisdiction, and direct the Magistrate to make inquiry, but it is desirable that the Government at its level, can suitably bring amendment to the Regulations and along with the birth date in Clause 6 of Regulation 12(A) include other incidental matters also.

6. In view of the aforesaid, the petitioner is directed to file necessary application along with all the relevant documents before the concerned Judicial Magistrate, First Class, on or before 31st August, 2007 and upon receiving such application, the learned Magistrate shall make detailed inquiry to ascertain the correct religion of the petitioner and accordingly issue certificate as early as possible and preferably within two month from the date of the application.

7. The petition is partly allowed. Rule is made absolute to the aforesaid extent.

[Akshay H. Mehta, J.]

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